Exhibit 3

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3

4   IN RE: PROCESSED EGG PRODUCTS: MDL NO. 2002
    ANTITRUST LITIGATION   08-MDL-02002

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                       PHILADELPHIA, PA

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9   DECEMBER 5, 2019

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12
    BEFORE: THE HONORABLE GENE E.K. PRATTER, J.

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14   - - - - -

15   TRANSCRIPT OF TRIAL PROCEEDINGS

16   DAY 21

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       (Transcript Produced By Mechanical Shorthand Via C.A.T.)

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1 was not, that there were uncertified eggs available. And, in
2 fact, the segment of the industry continued to want
3 uncertified eggs for several years, and they continued to get
4 them after the Certified Program went into effect.
5   Another thing that bigger buyers could do is they
6 could sponsor entry, in the same way that Sparboe did, and
7 Michael Foods. The bigger -- the bigger buyers like A&P or
8 Kroger or Publix, they could have gone to farmers or to
9 entities that used to have farms, and they could have told
10 them, We will finance the construction of a farm. We want you
11 to make us some uncertified eggs. And, again, we've seen
12 other businesses do that exact same thing. That's how Michael
13 Foods met its demand for eggs. So that's another option
14 that's available to them.
15   Go ahead.
16 Q. Well, thank you.
17 A. I thought I was talking too much.
18 Q. No. I asked the question.
19   And in terms of these companies, like Publix or
20 Kroger or Walmart, what -- again, would they want to be in the
21 business of sponsoring entry or going -- vertically
22 integrating back upward into the production of food?
23 A. Well, they might. I mean, that was the third thing that
24 I thought that I was -- that you wanted to get in, that the
25 third thing in the sponsoring entry is actually just going to

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1 the business themselves, and I think I spoke about that
2 yesterday, that Wegmans has a flock; Kroger used to have a
3 flock. Another option available to them is just go in and
4 start their own farms.
5   Whether they would want to, I think -- I think of
6 the corporations as being in the business to make a profit.
7 And if it were profitable to them, I think that they would,
8 and historically we've seen that. And we continue to see that
9 today. We see large grocers that have -- go backwards
10 integrated, meaning starting to supply themselves. And Kroger
11 is an example of that. Kroger, to this day, is in the
12 business of dairy production. They used to be in the business
13 of egg production. Wegmans is in the business of egg
14 production today.
15   So, yes, if it were the case, if they really wanted
16 uncertified eggs, and, well, you know, they couldn't find any,
17 well, they could go out and sponsor a farm or make their own
18 farm, and they could supply themselves with the uncertified
19 eggs that they wanted.
20 Q. Okay. Thank you. What is your next opinion?
21 A. Dr. Baye's estimates and calculations are not reliable.
22 Q. Okay. Now, we heard a lot about econometrics,
23 regression, and I do this at my own hazard, but let me ask
24 you, can you just give a very simple lay explanation of what
25 an econometric analysis is or what a regression is?

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1 A. I'll try.
2 Q. I appreciate that.
3 A. Sure. So regression is an effort to estimate how much
4 one thing changes when other things change. Usually we're
5 trying to estimate a causal relationship, meaning one causes
6 the other to change. And you approach the regression with a
7 theory that these things caused those other things to change.
8   In the case at hand, Professor Baye had information
9 on the monthly size of a laying flock. I'll skip that one
10 because it's basically the same as the second, which is the
11 monthly production of eggs. And he had that going back to
12 1990. So he had January 1990, how many eggs were produced in
13 the United States; February 1990, how many eggs were produced
14 in the United States; all the way through to 2012. And then
15 the question is, well, how -- how much that varied and how
16 much of that variation was due to things that are clearly not
17 the producer's fault.
18   So one thing that's going to cause changes in egg
19 production would be diesel prices. That's because the eggs
20 are shipped from the producers to the purchasers. And so if
21 diesel prices go up, it's going to impact the amount of eggs
22 that end up being produced. So he said, well, one of the
23 things is diesel prices.
24   Electricity, the price of electricity is going to
25 affect the amount of egg production. That's because in these

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1 henhouses, you're using a lot of electricity. And so the
2 costs of running that henhouse are going to go up when the
3 price of electricity goes up.
4   Another thing that can affect the price of the eggs
5 are grain. That's actually the number one cost for egg
6 production. My recollection is it's about 60 percent, maybe
7 70 percent -- I don't remember the exact number -- of the
8 costs of egg production is birdseed, bird food.
9   So what a regression does is it allows you -- in a
10 computerized way nowadays, but in the old days pen and paper
11 and hope -- is to take all those data, those pieces of
12 information about monthly egg prices and the price of
13 electricity, in -- not that month -- Professor Baye used the
14 price of electricity four months earlier -- the price of grain
15 or bird food four months earlier, the price of diesel, and
16 said: Well, how is it -- to what extent does egg production
17 change when those various things change?
18   And then the second thing that he wanted to estimate
19 was: Well, to what extent, after you allow for those
20 things -- they're okay, they're fine, they're benign -- for
21 those things to change, to what extent were prices higher or
22 lower in different periods of time? And those were his
23 restriction periods. And so to what extent were prices higher
24 or lower during the period of the first phase-in period of the
25 cage space guidelines and relative to the period before? And

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1 to what extent were prices higher or lower during the second
2 phase as opposed to the period before?
3   And so that's the basic idea, is that you try to
4 estimate how these things change; and then after estimating
5 how those things change, you know, how the production of egg
6 changes, when electricity prices change, when diesel prices
7 change, after having accounted for that, to what extent are
8 prices on average higher or lower during different periods of
9 time relative to what's called the benchmark, relative to the
10 time that you're comparing it to?
11   And what's important to understand is this causation
12 between electricity prices and diesel prices and grain prices.
13 The regression can't prove that. All that it's showing is
14 that when electricity prices go up, we tend to see egg
15 production go down. When diesel prices go up, we tend to see
16 egg production go down. It's a theory -- it's a reasonable
17 theory that you bring to the analysis beforehand that it's
18 causal, that this is a causal relationship. The regression,
19 it can't prove that. So it's an important thing to understand
20 when you're thinking about regressions.
21   A second thing --
22 Q. Dr. Walker --
23 A. Sure.
24 Q. -- if I may stop you for a moment. Several times you
25 used the word "price."

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1 A. Yes. Oh, I'm sorry.
2 Q. Did you mean production?
3 A. I meant production. I'm sorry. These same sorts of
4 analyses can be used to estimate prices, and I sometimes say
5 "price" to mean production. I'm sorry. All of those times I
6 talked about eggs, I was talking about egg production. When I
7 was talking about electricity and diesel and grain, I meant
8 price.
9   Another thing that is critical to understand,
10 particularly as regards to what I'm going to get into with
11 what Professor Baye did, is that a critical assumption in this
12 analysis -- and, again, it's an assumption; it's not something
13 that is proven by the regression itself -- is that there's a
14 fixed relationship between these causal variables, these
15 causes, and the production of eggs.
16   So that if, for example, it turns out at the end of
17 the day that the analysis shows that it's 3 percent is -- 1
18 percent increase in electricity prices causes a 3 percent
19 reduction in egg production -- you know, that's not the right
20 number, but let's assume that's what came out. An underlying
21 assumption is that that 3 percent was the same; that it wasn't
22 the case that it's 5 percent in 2012 and it was actually 1
23 percent in 1990, and then it averages out in raw years to 3
24 percent.
25   If that's the case, the model is spitting out

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1 garbage, because a fundamental assumption is that that
2 relationship was fixed and constant throughout the period,
3 subject to -- only to random error; that it's not the case
4 that there's a different relationship between these causal
5 variables in one period of time versus another. That is a
6 critical assumption of the analysis. And if it's violated, if
7 it turns out the assumption was false, then you can enter all
8 this data into a computer, it will spit out results, the
9 results will say, This is certain to this percentage of
10 certainty, and it's false. Totally unreliable. And you can't
11 rely on it in any way whatsoever, because the fundamental
12 assumptions have been violated.
13   So, yes, they spit out a number. There will not be
14 any warning telling you, These numbers are not reliable, but
15 they won't be reliable. And so you need to know that the
16 fundamental assumptions were correct and accurate before you
17 start the analysis. So --
18 Q. Before we get into sort of those assumptions, let me just
19 break down that and ask you a couple of questions. When you
20 said the benchmark period, what is the benchmark period in Dr.
21 Baye's production analysis?
22 A. In Dr. Baye's analysis, the benchmark period is 1990
23 through 2002. So he's comparing each of these periods of
24 time. Well, except in the backfilling ban.
25 Q. Right.

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1 A. But in the other one, the -- what he calls the main
2 specification, he's comparing the first period of the phase-in
3 of the cage space limitations to the 1990-to-2002 period. And
4 then he's comparing the second phase-in to the 1990-to-2002
5 period. And what he's estimating is whether, on average,
6 during each of those five periods, separately, for any one of
7 those five periods, on average, was egg production higher than
8 or lower or the same as it had been in the 1990-to-2002 period
9 or would have been, given the electricity prices that we see,
10 given the diesel prices that we see, given the grain prices
11 that we see, and given the other things, two or three or four
12 things he included in his model that he corrected for.
13   So he's comparing each of those five periods
14 separately to the period 1990 to 2002, and he's only comparing
15 whether output, on average, was higher in those periods. So
16 he can't say whether it was higher throughout the period. He
17 can't say -- or lower. He can't say whether it was higher
18 because there was a big spike at the end of one of those
19 periods, and if it were lower, he can't say that it's lower
20 because in the middle of the period for a couple of months, it
21 was really low, but the rest of it was the same. All that
22 this tells you is, on average, during each of those periods,
23 was output higher than it would have been based on the
24 benchmark, lower than it would have been during -- based on
25 what was happening in the benchmark, or the same as it would